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IN THE

Supreme Court of the United States

October Term, 1954.

No. 32.

STATE OF CALIFORNIA on relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,

Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a corporation organized under the laws of the State of Missouri,

Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF FOR THE PETITIONER.

Opinion Below.

The opinion of the St. Louis Court of Appeals [R. 131-149] is reported at 260 S. W. 2d 821.

Jurisdiction.

Jurisdiction arises out of Title 28, Sections 2101-4, U. S. Code, Rules 38 and 38½, Rules of the Supreme Court of the United States. The decision of the St. Louis

Court of Appeals was rendered September 15, 1953 [R. 150], reversing the trial court judgment in favor of petitioner. The motion for rehearing in the St. Louis Court of Appeals was filed by petitioner and denied October 16, 1953 [R. 152]. A petition for hearing in the Supreme Court of Missouri was filed and denied on the 14th day of December, 1953 [R. 157]. Thereafter, the St. Louis Court of Appeals stayed its mandate to the trial court [R. 159] on or about the 9th day of January, 1954, to permit the filing of a Petition for Writ of Certiorari in this Court, which Petition was filed within the ninety (90) days provided by Rule 38, Rules of the Supreme Court of the United States. The Writ of Certiorari was granted by the Supreme Court of the United States on or about the 11th day of October, 1954.

Relators.

Robert C. Kirkwood, Controller of the State of California, is joined with the Attorney General of California as co-relator because of the provisions of California Revenue and Taxation Code, Section 14350, effective September 9, 1953, quoted herein amongst "STATUTES INVOLVED." Fred N. Howser, who was Attorney General of California when the action below was commenced and acted as relator there, has been replaced as Attorney General of California by Edmund G. Brown, co-relator here.

Questions Presented.

I.

May the Missouri Court, while conceding that foreign taxing statutes may be enforced in Missouri, and conceding that decedent concerned was domiciled in California at the time of her death, and that the intangible personal property in her trust was subject to California inheritance tax, arbitrarily refuse, nevertheless, to enforce the California inheritance tax law on the ground that that law does not provide a transitory cause of action?

II.

In order to determine whether or not the Missouri Court has given full faith and credit to the Statutes of California, and whether or not Missouri has given to the citizens of California the privileges and immunities given to the citizens of other states, and whether or not Missouri has given the equal protection of its laws to the citizens of California, and whether or not the Missouri court has deprived California of property without due process of law, must not the United States Supreme Court itself examine the California inheritance tax law and determine the transitory or non-transitory character of the cause of action provided by that law?

III.

Does the California inheritance tax law provide a transitory cause of action?

Statutes Involved.

United States Constitution, Article IV, Section 1:

"Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

United States Constitution, Fourteenth Amendment, Section 1:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Revenue and Taxation Code:

"§30. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or the political subdivisions thereof, which extends a like comity to this State.

"§31. The Attorney General or an appropriate official of any political subdivision of this State may bring suits in the courts of other states to collect taxes legally due this State or any political subdivision thereof. The officials of other states which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the secretary of state under the great seal of the state that such officers

have authority to collect the tax is conclusive evidence of such authority. This section does not apply to Parts 8 and 9 of this code.

"§14350. The Controller may bring suits in the courts of other states to collect inheritance taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its death taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this state.

"§14501. At or prior to the time of the appointment of the probate appraiser or appraisers pursuant to Section 605 of the Probate Code, the superior court having jurisdiction in probate of the estate of any decedent, or a judge of that court, shall designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax.

"§14502. Upon his designation and appointment the inheritance tax appraiser has:

(a) Jurisdiction to require the attendance before him of the executor, administrator, any person interested in the estate, or any other person who he may have reason to believe possesses knowledge of the

estate, of any property transferred by the decedent by a transfer subject to this part, or of any facts that will aid the appraiser or the court in the determination of the tax.

(b) All the powers of a referee of the superior court.

"§14508. On the day that the report is filed, or on the next succeeding judicial day, the clerk of the superior court shall give notice of the filing to all persons interested by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceedings.

"§14651. The superior court which has acquired jurisdiction in probate of the estate of any decedent shall hear and determine in the probate proceedings all questions relative to any tax imposed by this part on each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"§14652. The superior court of the county in which a decedent who was a resident of this State resided at the time of his death has jurisdiction to hear and determine all questions relative to any tax imposed by this part on any transfer made by the decedent where the decedent either (a) leaves no estate or (b) leaves an estate in which the property transferred is not included and the transferee does not share.

"§16123.5. The Controller may bring suits in the courts of other states to collect gift taxes payable under this part. An official of another state which extends a like comity to this State may sue for the

collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its gift or other transfer taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State." (Secs. 14350 and 16123.5 added by Stats. of 1953, Chap. 1313.)

California Political Code:

"§3671e. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other States which extend a like comity to this State.

The Attorney General is hereby empowered to bring suits in the courts of other States to collect taxes legally due this State. The officials of other States which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State under the great seal of the State that such officers have authority to collect the tax shall be conclusive evidence of such authority."

Massachusetts General Laws of 1932, Chapters 65, 65a:

"§30. The probate court having jurisdiction of the settlement of the estate of the decedent shall, subject to appeal as in other cases, hear and determine all questions relative to the tax imposed by this chapter, or by the corresponding provisions of earlier laws, and the commissioner shall represent the commonwealth in any such proceedings. If the court finds any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs, and execution shall be awarded against the goods and estate of the deceased in the hands of the executor, administrator or trustee, or,

if it appears that there are no such goods or estate in his hands, against the goods and estate of the executor, administrator or trustee, as if for his own debt; but the administrators, executors, trustees and grantees mentioned in this chapter shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees respectively.

"§31. Upon petition of the commissioner the probate court shall, after such notice to the owners of any real estate or separate parcel thereof as said court shall order, determine the amount of taxes imposed by this chapter and by corresponding provisions of earlier laws which have become payable, and of interest on said taxes, for which such real estate or separate parcel thereof is charged with a lien. After such determination said commissioner may collect said taxes and interest by sale in the manner provided by chapter sixty for the collection of taxes by sale by a collector of taxes, so far as applicable.

"§32. The commissioner shall commence proceedings for the recovery of any of the taxes imposed by this chapter or by corresponding provisions of earlier laws within six months after the same become payable; and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the non-payment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein. Whenever the circumstances of a case require, the probate court may extend the time for payment of said tax, with or without interest. Any taxes assessed under this chapter or corresponding provisions of earlier laws, which are unpaid and uncollectible,

may be abated by the appellate tax board on the recommendation of the attorney general and the commissioner at any time after the expiration of five years from the date when the same became payable.

"§33. Taxes imposed by this chapter and by corresponding provisions of earlier laws may be recovered by the commissioner in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner. In a proceeding under this section for the collection of taxes imposed by this chapter, the determination by the commissioner under section twenty-seven of the amount of tax shall be final as to such amount; but an executor, administrator, trustee, grantee, donee or survivor may show, in any proceeding brought against him under this section, any facts which would entitle him to an abatement under section twenty-seven, and a judgment or decree shall be entered for the amount of the tax so determined less the amount proved to have been assessed without authority of law, together with interest and costs. If upon an information brought hereunder the court shall find that any tax remains due, it shall order the executor, administrator, trustee, grantee, donee, or survivor to pay the same, with interest and costs, and may award execution therefor in the manner and form provided in section thirty.

"§34. Penalties and forfeitures incurred under this chapter may be recovered by the commissioner in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner."

Missouri Revised Statutes of 1949, Title X, Chapter 145:

"Sec. 145.150. 1. The probate court which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this chapter and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction.

2. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section 145.210 shall become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax, unless upon the application of interested parties the existence of other property or an erroneous appraisement be shown.

3. If it appears that said estate may be subject to such tax, it shall be the duty of the court to set a day for the hearing and determining the amount of said tax and to cause notice thereof to be given in the same time and manner and to the same parties as is hereinafter provided for appraisers, or the court, before determining such matters, may of its own motion, or on the application of any interested person, including the director of revenue, the prosecuting at-

torney or attorney general, appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in said estate or the attorney for any of such parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under the provisions of this chapter.

4. Every such appraiser shall make and subscribe, and file with the court appointing him, an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will appraise all the property, estate, interest therein or income therefrom involved in the proceeding in which he is appointed at its clear market value and shall forthwith fix a time and place for hearing the evidence and shall file notice thereof with the court appointing him not less than ten days prior to the date so fixed and shall also give notice by mail to all interested persons whose address he may have, always including the director of revenue and the prosecuting attorney of the county.

"Sec. 145.160. 1. The appraiser shall appraise all property, estate, assets, interest or income at its clear market value and he is hereby authorized to issue subpoenas and compel the attendance before him of witnesses and the production of books, records, documents, papers and all other material evidence, to administer oaths and to take the testimony of all witnesses under oath.

2. He shall make report of his appraisement to the court in writing and shall return the testimony of the witnesses and all other evidence and such other facts in relation thereto as the court may by its order require, and such report shall be made within twenty

days after the appointment of such appraiser, unless the court, for good and sufficient cause, by order gives such appraiser further time in which to report; provided, when the estate consists of personal property only, the prosecuting attorney may, with the consent of the director of revenue, agree with the parties liable to pay any tax, upon the amount of the same, and the court, if it approves such agreement, shall enter judgment accordingly and no appraiser shall be appointed.

"Sec. 145.170. 1. Any interested person, including the director of revenue, attorney general or prosecuting attorney of the county may file exceptions to the report of the appraiser within thirty days after the date same is filed, specifically pointing out his or their objection thereto, and such exception shall be determined by the court in a summary manner.

2. Any person aggrieved by the judgment of the court as to the amount of liability for the tax may appeal to the court having jurisdiction of appeals from said court in ordinary civil actions, and in case of appeal the appellant shall be required to give bond to the state in double the amount of the tax, interest, penalty and cost involved, conditioned to pay all taxes, interest and penalties assessed and costs taxed by the appellate court.

"Sec. 145.310. If any tax shall be due under the provisions of this chapter and no administration has been had in this state on the estate of decedent and no proceedings are pending in this state in which the amount of said tax may be fixed or the lien therefor enforced, any person interested in the property or estate may file an affidavit with the probate court of the county wherein the property or estate, or the greater part thereof, is situated, setting forth a de-

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scription thereof and the clear market value thereof and the names of the persons, associations or corporations liable for the tax thereon, and an appraiser shall be appointed and the tax fixed by said court as herein provided. However, the probate court of any county in which administration on any such estate should be granted may, on its own motion, appoint such an appraiser."

(Current Law: The law in effect at the date of death of decedent involved herein was substantially the same, and is found in Missouri Revised Statutes of 1939, Chapter 1, Article 21.)

California Code of Civil Procedure, Section 395, provides in part, as follows:

"In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and

the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the State, or, if residing in the State, and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the State, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, township, city or town where he resides, his residence must not be considered in determining the proper place for the trial of the action."

Statement of Facts.

The decedent involved herein, Mary Agnes Rogers, during her lifetime and on July 8, 1936, executed a revocable trust whereby she transferred to St. Louis Union Trust Company certain intangible personal property, upon trust to pay her the income therefrom for life, and, at her death, to distribute the corpus to certain named beneficiaries. Thereafter, and on June 14, 1945, she died in Los Angeles, California. Her estate was probated in the Superior Court of Los Angeles County, California, as a domiciliary estate. A Federal Estate Tax was imposed upon her estate, including said revocable trust, in the amount of five thousand five hundred ninety-four and 26/100 dollars ($5,594.26), and the California Probate

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Court, after procedures prescribed by California law, made an order fixing California inheritance tax on her estate, including said trust, in the amount of six thousand two hundred thirty and 96/100 dollars ($6,230.96). Her Administrator paid said Federal Estate Tax and paid one thousand eight hundred eighty-one and 21/100 dollars ($1,881.21) on account of said California inheritance tax, which exhausted the assets in his hands, leaving a balance in the amount of four thousand three hundred forty-nine and 75/100 dollars ($4,349.75) unpaid on said California inheritance tax. There were no persons or property subject to process of the Courts of California for the collection of this deficiency, and Petitioner consequently filed the instant suit in the Circuit Court of St. Louis County, Missouri, against Respondent here and individual defendants, and secured judgment for said deficiency, plus interest, in the total amount of five thousand twenty-three and 61/100 dollars ($5,023.61) against respondent. Respondent then appealed to the Supreme Court of Missouri, which transferred the case to the St. Louis Court of Appeals for decision. That Court reversed the Circuit Court, review of which decision by the United States Supreme Court is now sought by Petitioner. Petitioner believes there is no dispute about the foregoing facts, all of which may be gleaned from the first few pages of the opinion of the St. Louis Court of Appeals [R. 131 *et seq.*]. After said decision, Petitioner moved for rehearing in the St. Louis Court of Appeals, arguing violation of its rights under the United States

Constitution [R. 151]. The motion was denied [R. 152]. Thereafter, Petitioner moved for hearing by the Supreme Court of Missouri [R. 154], which motion was denied [R. 157].

Summary of the Argument.

The California law establishes a transitory cause of action for collecting California inheritance tax. Missouri courts possess adequate machinery to, and did in this case prior to reversal of the trial court, adequately enforce the California inheritance tax law. The California inheritance tax is not a type of tax novel to the thought of the people of the State of Missouri, or abhorrent to its public policy, as Missouri levies a tax of the same type under a law setting up procedures similar to the California law. For the Missouri court to arbitrarily pronounce, nevertheless, that the California law does not provide a transitory cause of action, and therefore refuse to enforce the California law, is an unconstitutional refusal to give full faith and credit to the California statutes, a denial to the citizens of California of the privileges and immunities extended by Missouri to citizens of other states, a refusal by Missouri of equal protection of its laws to the people of California, and a deprivation of the property of California without due process of law.

ARGUMENT.

I.

California Law Provides a Transitory Cause of Action for Collection of California Inheritence Tax.

The opinion of the St. Louis Court of Appeals indicates that the trial court was correct in holding that decedent, Mary Agnes Rogers, died domiciled in California [R. 133], and that California could lawfully impose its inheritance tax on the intangible personal property in the revocable trust created by her with Respondent as trustee [R. 134 and 136]. The court approves its former decision in *Oklahoma Tax Commission v. Rodgers*, 238 Mo. App. 1115, 193 S. W. 2d 919, permitting enforcement of the Oklahoma income tax law by the courts of Missouri [R. 141 and 148], but refuses to enforce the California inheritance tax law because California, the Court says, has not provided a transitory cause of action for collection of its inheritance tax [R. 146]. This is true, the Court says, first because [R. 144]:

> "Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax. The admissions in plaintiff's brief, heretofore quoted, reveal that no machinery existed in Missouri to adjudicate such facts."

[The Exhibits A and B referred to are explained in the immediately preceding paragraph of the Opinion (quoted in the note[1] below), and appear at R. 20 and 39.]

But Petitioner was in very little need of proving value in the trial court, as Respondent admitted by its answer the allegations of Petitioner's Amended Petition in the trial court that Respondent had received and still held assets of the trust, worth as of the date of death of Mary Agnes Rogers the sum of ninety-seven thousand six hundred fourteen and 90/100 dollars ($97,614.90) (Amended Petition, pars. 7 and 9 [R. 3 and 4]; Answer thereto, pars. 3 and 5 [R. 25].) This accounts for all but five hundred thirty-seven and 37/100 dollars ($537.37) of the ninety-eight thousand one hundred fifty-two and 27/100 dollars ($98,152.27) net taxable estate. Certainly if value had been a substantial issue, Petitioner could have established it by deposition of its California appraiser and by testimony of St. Louis securities experts. Computation of the

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[1]"The very necessity which confronted plaintiff and compelled the attempted use by plaintiff of various California court proceedings and orders as evidence in this case, brings to a focus the reasons for its inability to succeed herein. Plaintiff offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approvnig and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance tax is $98,152.27 and assessing and fixing the liabilities of named heirs [Ex. A]; and the account and report of its public administrator and petitioner for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition [Ex. B]. Parenthetically, it might be noted that although a copy of the report of the Inheritance Tax Appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence."

tax, of course, is a matter of simple arithmetic when value is established, consisting of application to the exemptions and rates fixed by the California statute to the value of the shares of the distributees. Respondent never contended in the court below, or in the trial court, that the tax was wrongly computed. Far from admitting in its brief in the court below that no machinery existed in Missouri to adjudicate such facts, Petitioner said in its brief (not included in the printed record):

> "While there is obviously no Missouri *statutory* (emphasis added here) machinery for determining California inheritance tax, the issues of fact and law on which the ultimate rights of the parties to such a determination depend are common ones with which Missouri courts deal repeatedly, such as domicile, valuation of property, determining degrees of kinship, construction of instruments to determine shares or interests of the parties thereto, validity of obligations of the decedent claimed as deductions, etc. Of all the substantive points which might have affected appellant's rights, they chose to urge upon the trial court here only the issue of domicile. This, apparently, the trial court experienced no difficulty in resolving. Although the court did not and could not here repeat all the procedures followed by the California court in complying with the California *statutory* (emphasis added here) recipe for an inheritance tax determination, it is difficult to see, when the California court had complied with its own law, but where no attempt was made by it to assert a judgment *in personam* against persons against whom its process had not issued, and when appellants have had full opportunity to assert any substantive defenses in the trial court below, whose process had effectively issued against them, why the applicable

law of both California and Missouri had not been properly complied with and applied by the trial court in rendering the judgment appealed from. If such a procedure is new to Missouri courts, certainly it is only a step in the constant progress of American law from its ancient and insular rigidity to the point of becoming a law which will serve modern American society. And certainly it is a small step beyond the broad and enlightened rule of *State Tax Commission of Oklahoma v. Rodgers* (1946), 238 Mo. Appeals 1115, 193 S. W. 2d 919."

In *State Tax Commission of Oklahoma v. Rodgers,* 238 Mo. App. 1115, cited in the quotation above, the Missouri court enforces an order of the Oklahoma Tax Commission, although there was no Missouri statute providing for enforcement of an order of the Oklahoma Tax Commission. At R. 144, the opinion below quotes from *Tennessee Coal, Iron and Railroad Co. v. George,* 233 U. S. 354 at 359, as follows:

> "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that 'where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed.' "

But the court neglects to observe that this statement, while no doubt a correct generalization, is dictum, and that on the immediately succeeding page of the opinion the effective part of the decision of the United States Supreme Court appears, requiring the courts of Georgia to enforce under the full faith and credit clause a statute of Alabama limiting employers' defenses in cases of industrial injury,

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even though the Alabama statute provided expressly that it should be enforced in the courts of Alabama *and not elsewhere*. At 233 U. S. 360, the United States Supreme Court says:

> "The courts of the sister state trying the case would be bound to give full faith and credit to all those substantial provisions of the statute which inhered in the cause of action, or which named conditions on which the right to sue depend, but venue is no part of the right, and the state cannot create a transitory cause of action and at the same time destroy the right to sue on that cause of action, in any court having jurisdiction."

Atchison, Topeka & Santa Fe Railroad v. Sowers, 213 U. S. 55, is to the same effect.

The court below discusses the rule [R. 144] that courts may sometimes refuse to enforce Workmen's Compensation Acts of other states, but certainly foreign enforcement of a Workmen's Compensation claim is not comparable to the present situation. There the court would be called upon to enforce what is basically a tort claim, without extending the right to trial by jury, to receive hearsay evidence and to disregard the rule of contributory negligence. Even such acts may be enforced extraterritorially when they contain an alternate provision for enforcement by judicial action. (*Esteves v. Lykes Bros. Steamship Co.*, 74 F. 2d 364, cert. den., 295 U. S. 751.) In the present case, the factual issues are the same as Missouri courts must try every day in litigation under their own inheritance tax law, which is similar in all material respects to the California law. (Missouri Rev. Stats. 1949, Title X, Chap. 145, Secs. 145.150, 145.160, 145.170, 145.310, quoted herein among "Statutes Involved.")

The Massachusetts inheritance tax law is also similar in essentials to California inheritance tax law (Massachusetts Gen. Laws 1932, Chaps. 65-65A, Secs. 30-34, quoted herein amongst "Statutes Involved.") Yet in *Massachusetts v. Missouri*, 308 U. S. 1, the Attorney General of Missouri asserted in argument to this court (308 U. S. at 13) that Massachusetts could enforce its inheritance tax law in Missouri courts, and the court relied on this assertion in deciding the case (308 U. S. at 20).

Secondly, the St. Louis Court of Appeals says the cause of action here is not transitory because [R. 145]:

> "We find on reading the California statutes that a remedy is prescribed, and that it must be pursued in a specifically designated California court; not in any court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the superior court which has acquired jurisdiction in probate of the estate of any decedent,' Section 14651, Rev. and Tax Code, or if there be no estate, the superior court of the county in which the decedent resided at the time of his death. Sec. 14652. By Sec. 14501, that specified court appoints an inheritance tax appraiser, who has 'all the powers of a referee of the superior court.' Sec. 14502. He files his report in the court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the courthouse in the county where the court holds its sessions,' etc. Sec. 14508. Ultimately, the court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California Court."

But these California Revenue and Taxation Code sections are clearly only sections for laying venue in a California

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proceeding. (*Tenn. Coal, Iron & Railroad Co. v. George*, 233 U. S. 354, quoted from above.) The sections were followed in the administration proceeding in the Estate of Mary Agnes Rogers in Los Angeles County. Certainly, reference of designated fact-finding duties to a referee is not a strange practice to Missouri courts, and the trial court here could have appointed a referee to perform the duties of the California inheritance tax appraiser if it had felt the need of one. Section 395 of the California Code of Civil Procedure provides, in part, as follows:

> "In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the State, or, if residing in the State, and the county in which they reside is unknown to the plaintiff, the

> action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the State, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, township, city or town where he resides, his residence must not be considered in determining the proper place for the trial of the action."

Following the reasoning of the St. Louis Court of Appeals, no California cause of action in tort or contract is transitory since California law has provided that each must be tried in a California County specified by this statutory recipe. No doubt every state in the Union has similar statutes laying venue for suits of various sorts, including suits for collection of inheritance tax and other taxes. Therefore, perhaps if the decision below is allowed to stand, no out-of-state cause of action of any sort may be enforced in Missouri.

The opinion below points out [R. 146, 7] that California Political Code, Section 3671(e) (quoted herein in "Statutes Involved"), under authority of which this action was brought, is not a part of the inheritance tax law but is general, permitting action by the California Attorney General in other states for collection of taxes of all sorts. The court does not explain why this is significant. The California Political Code does not contain any tax law of consequence, almost all California taxing provisions having been removed to the Revenue and Taxation Code, and the section is meaningless if it does not refer to all taxes, including those levied under the Revenue and Taxation Code.

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Furthermore, it is a settled rule of statutory construction in California that all the Codes are to be read together as part of one statute. (*In re Porterfield*, 28 Cal. 2d 91 at 100 (1946); *Guardianship of Thrasher*, 105 Cal. App. 2d 768 at 776 (1951).)

The opinion further points out [R. 147] that California Political Code, Section 3671(e) was removed from the Political Code and transferred to the Revenue and Taxation Code by the 1951 California Legislature, where it now appears as Sections 30 and 31 of that Code (quoted herein amongst quoted "Statutes Involved"), and that, as reenacted, it contains the language "This section does not apply to parts 8 and 9 of this Code," which parts contain California's Inheritance and Gift Tax laws. The court then says, of this statutory change [R. 148]:

> "However, it does indicate a recognition by the California legislature that it never had created in its inheritance tax law a right separate from a local remedy."

The court further says [R. 148]:

> "The present language of Sec. 31 can be construed as a withdrawal on the part of California of the comity formerly extended by it to other states, respecting suits for inheritance or gift taxes (if truly transitory, and not localized by union with a specified local remedy). To this date, so far as we can ascertain from the cases, no sister state has successfully brought an action in California to collect an inheritance tax. Under the new California statute, it would appear that in the future no such suit would be entertained in a California court, and comity seems withdrawn."

In these statements, the court could not have been more wrong. It appears nowhere in the record, of course, but this brief writer knows that the bill which accomplished this change in the 1951 legislature was accompanied by a companion bill to enact Revenue and Taxation Code, Section 14350, as follows:

> "The Controller may bring suits in the courts of other states to collect inheritance taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its death taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State."

A similar section, 16123.5, was to be added to the Gift Tax Law. These two bills were so designed because it was thought proper that the Controller, who was in charge of intrastate administration of the inheritance and gift tax laws, with a separate legal staff independent of the California Attorney General, should be invested with the power of extraterritorial enforcement of these laws. The bill to enact Revenue and Taxation Code, Sections 14350 and 16123.5, was somehow sidetracked in the pressure of the legislative section, and failed of passage. A similar bill was, however, passed by the 1953 Legislature and appears in Chapter 1313, California Statutes of 1953. The section as enacted appears herein among "Statutes Involved."

Petitioner cannot cite a decision of a California reviewing court in which a judgment on a foreign inheritance

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tax liability was sustained, but, with Political Code, Section 3671(e) in effect, it would appear futile for any taxpayer to appeal such a judgment. In the period between the 1951 and 1953 legislation, there may have been some doubt on the subject, but certainly Revenue and Taxation Code, Section 31, does not prohibit suits on foreign inheritance taxes. It simply deprives the California Attorney General of authority to sue extraterritorially for California inheritance taxes, leaving no California officer with such authority expressly until the enactment of Revenue and Taxation Code, Section 14350, as aforesaid. However, Revenue and Taxation Code, Section 14761, in effect long before and after 1951, would appear by clear implication to authorize the California Controller to sue extraterritorially. Said section reads as follows:

> "§14761. Whenever he is cited as a party to any proceeding or action to determine any tax imposed by this part, or whenever he deems it necessary for the better enforcement of this part to secure evidence of the evasion of, or to commence or appear in any proceeding or action to determine, any such tax, the Controller may, with the consent and approval of the Attorney General:
>
> (a) Specially employ any attorney or other person *in or out of the State* (emphasis added) to act for or represent him on the State's behalf.
>
> (b) Incur any reasonable and necessary expense for an incident to the employment."

Petitioner strongly urges that the court below is in error in holding that the remedy provided by the California inheritance tax law is not transitory, and that such error constitutes a violation of California's rights under the United States Constitution.

II.

The Erroneous Decision of the Court Below Constitutes an Invasion of the Rights of Petitioner Under the United States Constitution.

If the decision of the St. Louis Court of Appeals that California's cause of action under its inheritance tax law is not transitory was arbitrary and erroneous, then Petitioner strongly urges that full faith and credit have not been given to its laws by the Missouri Court, as required by Article IV, Section 1, of the United States Constitution. Petitioner disclaims here, and disclaimed in the court below, any contention that the inheritance tax order of the California Probate Court was a judgment *in personam* entitled to full faith and credit in Missouri. But California's statutes, as well as its valid judgments *in personam*, are entitled to full faith and credit. (*Bradford Electric Co. v. Clapper*, 286 U. S. 145 at 155.) In *First National Bank of Chicago v. United Air Lines*, 342 U. S. 396, at 398, the United States Supreme Court says:

> "That Illinois is willing for its courts to try some out of state death actions is no reason for refusal to grant full faith and credit as to others."

And Petitioner's claim for inheritance tax under its inheritance tax law, which the court below concedes is justly due [R. 136], and which can hardly be said to be a novel type of law to a Missouri court (see *supra*, p. 21), is denied enforcement, not because Missouri public policy is against enforcement of foreign tax statutes [R. 141 and 148], but because the Missouri court insists, against California's strenuous objection, that California's law must be construed as non-transitory. This, after the Missouri trial court has very effectively, acceptably and with no apparent effort, applied the California law and rendered judgment thereon. Petitioner urges that, under

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the circumstances, the United States Supreme Court must itself review the Missouri court's decision, and, if it finds it erroneous, reverse it as denying full faith and credit to California's law.

Order of Travelers v. Wolfe, 331 U. S. 586;

John Hancock Insurance Co. v. Yates, 299 U. S. 178 at 183;

Milwaukee County v. White Company, 296 U. S. 268 (deemed applicable here although the case deals with a suit on a judgment *in personam* for taxes which the present case does not, because Missouri has no public policy against enforcement of foreign tax statutes).

The United States Supreme Court will itself decide, when the laws of two states conflict, to what extent the law of the foreign state must be given full faith and credit.

Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532 at 547;

Pacific Insurance Company v. Commission, 306 U. S. 493 at 502;

Magnolia Petroleum Company v. Hunt, 320 U. S. 430 at 443.

Petitioner further urges that if the decision of the court below is erroneous, the Missouri court has refused to give Petitioner the equal protection of its laws, and has denied to the citizens of California the privileges it extends to the citizens of Oklahoma, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

Kentucky Finance Corporation v. Paramount Exchange Corporation, 262 U. S. 544 at 550;

Laurence v. State Tax Commission, 286 U. S. 276 at 282;

McKnett v. St. Louis & San Francisco Railway Co., 292 U. S. 230 at 233.

Certainly the State of California, acting through its duly elected officers, must be considered as much a "person" within the meaning of the constitutional provision as the business corporation involved in the first cited case, and the Missouri courts should not be allowed arbitrarily to refuse to entertain suits brought by California while entertaining tax actions brought by other states. California had a vested interest in and right to possession of a fractional part of the trust corpus in Respondent's hands as of the date of death of trustor Mary Agnes Rogers. (*Estate of Stanford*, 126 Cal. 112.) The court below concedes [R. 134 and 136] that the trust corpus, being intangible personal property, had its situs in law in California, and that California could lawfully tax it. California cannot, of course, collect its tax without recourse to the courts of Missouri.

Therefore, in order to determine whether or not Missouri has unconstitutionally denied the citizens of California the equal protection of its laws and the privileges extended to citizens of other states, the United States Supreme Court must itself review the decision of the court below that California's cause of action for collection of inheritance tax is not transitory, and, if it is erroneous, as Petitioner submits that it is, reverse it.

Petitioner further urges that the erroneous decision of the court below has the effect of depriving California of its property without due process of law, in violation of said Section 1 of the 14th Amendment. As pointed out above, California had a vested interest in a fractional part of the trust corpus in Respondent's hands, which has its situs in the view of the law in California, but which is, nevertheless, unavailable to California without access to

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Missouri Courts. A corporation is a "person" within the meaning of the "due process" clause.

Pierce v. Society of Sisters, 268 U. S. 510 at 535;

Grosjean v. American Press Co., 297 U. S. 233 at 244;

Connecticut General Life v. Johnson, 303 U. S. 77 at 80.

A fortiori, the State of California, representing all its citizens, must be a "person" entitled to the protection of the constitutional provision. Therefore, Missouri's judicial refusal of access to its courts is a violation of due process.

Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673 at 682;

People v. Broad, 216 Cal. 1, cert. den. 287 U. S. 661.

Conclusion.

Petitioner believes it to be true that no inheritance tax was paid to the State of Missouri on the trust corpus involved herein although it would be taxable under Missouri law if decedent Mary Agnes Rogers had died domiciled in Missouri. [See R. 107.] Certainly, if no tax was paid in Missouri, none will now be paid, since the court below holds this decedent to be domiciled in California. Hence, if the decision is allowed to stand, this substantial fund will have entirely escaped inheritance taxation, although the clearly expressed public policy of both states involved is that such funds should contribute to the cost of state government. Petitioner suggests that the court should take judicial notice, as a matter of common knowledge, of the fact that many people of substantial wealth move from other states to California on

retirement. The proclivity of some of them to leave the bulk of their assets in some form or other in their state of origin makes it necessary for California inheritance tax officials frequently to seek access to foreign courts for collection of inheritance tax. If allowed to stand, the precedent established by the court below will seriously hamper California in its efforts to collect its revenue in many other states besides Missouri. Petitioner respectfully represents that, in the interest of the development of a more smoothly operating national union suitable to the modern age, the United States Supreme Court should reverse the decision of the court below as arbitrary, archaic, insubstantial and hyper-technical to such an extent that it violates the constitutional rights of the State of California.

Respectfully submitted,

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